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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20054

In the Matter of )  
 )  
Local Exchange Carriers' Rates, )  
Terms, and Conditions for )  
Expanded Interconnection for )  
Special Access )

CC Docket No. 93-162

Revisions to the Cincinnati Bell )  
Tariff, F.C.C. No. 35, Transmittal )  
No. 620; Petition for Exemption )  
from Physical Collocation )  
Requirement. )

\_\_\_ Docket No. \_\_\_

Revisions to the Ameritech Oper- )  
ating Companies Tariff, F.C.C. )  
No. 2, Transmittal No. 697. )

\_\_\_ Docket No. \_\_\_

Revisions to the GTE Telephone )  
Operating Companies Tariff, F.C.C. )  
No. 1, Transmittal No. 771. )

\_\_\_ Docket No. \_\_\_

Revisions to the United Telephone )  
Companies Tariff, F.C.C. No. 5, )  
Transmittal No. 315. )

\_\_\_ Docket No. \_\_\_

Comments on Direct Case

The Staff of the Public Utilities Commission of Ohio (Staff), pursuant to the Order Designating Issues For Investigation in CC Docket No. 93-162, FCC DA No. 93-951, released July 23, 1993, (Investigation Order),<sup>1</sup> hereby submits its comments on the direct cases of the following Tier 1 Ohio Local Exchange Carriers (Ohio LECs): The Ameritech Operating Companies (Ameritech), Cincinnati

1. The aforementioned Investigation Order was triggered by numerous entities, including Staff, submitting a Petition to Suspend and Investigate the tariff transmittals, filed February 16, 1993, by the Tier 1 Local Exchange Carriers pursuant to the Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking in CC Docket No. 91-141, FCC No. 442, released October 19, 1992 (Report and Order).

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Bell Telephone Company (CBT), GTE Telephone Operating Companies (GTE), and the United Telephone Companies (United).

The Ohio LECs filed these direct cases in response to the Investigation Order whereby the Federal Communications Commission (FCC or Commission) found certain provisions of the proposed Tier 1 LEC's tariff transmittals required further investigation. Staff's comments, in its Petition to Suspend and Investigate, addressed both the proposed physical and virtual tariffs of the Ohio LECs. Subsequently, on June 9, 1993, the FCC granted the Ohio LECs' petitions seeking exemptions from the mandatory provision of physical collocation for the central offices located in Ohio based upon Ohio's expanded interconnection policy. Pursuant to the Commission's June 9, 1993 state exemption, Ohio's LECs now have the ability to negotiate and implement either physical or virtual collocation arrangements in Ohio, subject to certain requirements. Therefore, Staff finds it appropriate to again comment on both the physical and virtual tariff proposals because, under current Ohio regulation, our intrastate policy mirrors the interstate policy.

Generally, while Staff commends the Ohio LECs for supplying much of the information requested by the Commission in its Investigation Order, our review also indicates that some of the proposed rates and tariff provisions are still inconsistent with the Commission's goal of promoting increased competition. Therefore, the Staff respectfully requests that the Commission direct the Ohio LECs to address the concerns delineated below and revise their tariff proposals accordingly.

#### I. FCC TARIFF FILING REQUIREMENTS

Staff's Petition to Suspend and Investigate initially noted that none of the Ohio LECs had fully complied with the FCC's tariff filing requirements as addressed in paragraph 261 of the Report and Order. Specifically, CBT, GTE, and United either did not submit virtual collocation tariffs for the state of Ohio at all or only proposed to offer virtual interconnection on an individual case basis (ICB).<sup>2</sup> Staff noted in its suspension petition that paragraphs 157-158 of the Report and Order directed LECs, where

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2. Staff's concern with Ameritech's tariff was that no tariff provisions addressing microwave interconnection were submitted. Subsequently, the FCC's Common Carrier Bureau released, on June 9, 1993, an order amending its requirement on microwave interconnection. This order provided that Tier 1 LECs need not tariff microwave interconnection except where reasonably feasible in response to a bona fide request. Therefore, Staff no longer challenges Ameritech's tariff on those grounds.

exempted from offering physical, to file, at a minimum, the reasonably standardized rate elements<sup>3</sup> for virtual interconnection.

Staff's review, subsequent to the submission of the Ohio LEC's direct cases, reveals that CBT did not, in compliance with the FCC's Report and Order, file rates regarding the labor and material charges for installation, repair, and maintenance nor other charges that reasonably can be standardized for each central office (e.g., power and environmental conditioning). CBT's rationale for this position is that the company will only offer virtual interconnection on a negotiated basis; however, the Report and Order made the filing of the remaining rate elements for virtual collocation, as mentioned above, basic elements to be included in the virtual tariffs while the remainder are subject to negotiation between the LEC and the interconnector. While Staff recognizes CBT's preference is to offer physical interconnection,<sup>4</sup> the fact remains, as acknowledged by CBT in its direct case,<sup>5</sup> that situations may arise where it will negotiate a virtual interconnection arrangement. Therefore, it is Staff's view that CBT must tariff, for virtual interconnection, the rate elements listed above.

Staff's previous comments also noted that the proposed United tariffs were deficient because it had not generally tariffed rates for central office build-out. Staff's position was that interconnectors will be substantially disadvantaged by leaving a significant charge, such as the central office build-out charge, to be specified later by the LEC. The Investigation Order<sup>5</sup> specifically required Tier 1 LECs that have not tariffed separate rate elements for space preparation to explain the reasonableness of this approach and justify the rate structures chosen to recover central office construction charges. In response, United submits in its direct case that, where properly conditioned central office space is unavailable, time and material charges will be recovered. United rationalizes that construction costs differ between locations and the amount of construction may vary; therefore, time and material charges are necessary.

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3. Those reasonably standardized rate elements include the study area wide averaged cross-connect element, any future contribution charges approved by the Commission, labor and materials charges for installation, repair, and maintenance of central office electronic equipment dedicated to interconnectors under virtual collocation, as well as any other charges that reasonably can be standardized for each central office.

4. CBT direct case, page 1.

5. Investigation Order page 18, paragraphs 31(a) and 31(b).

Staff's position remains the same. Other Ohio LECs have been able to quantify a charge which reasonably allows recovery of the central office construction charge. This factor, in conjunction with the significant charge associated with central office construction, necessitates that a charge be established so that interconnectors do not find themselves saddled with significant business expenses at the time the entity takes the interconnected circuit.

## II. TERMS AND CONDITIONS

In its Petition to Suspend and Investigate, Staff noted a plethora of terms and conditions which, in Staff's opinion, were unreasonable and potentially anti-competitive. Many of those conditions impose excessive burdens, either financially or administratively, on interconnectors. The Commission agreed with Staff that a number of terms and conditions contained within the proposed tariffs warranted further investigation.<sup>6</sup> Below is a listing of those items the Commission agreed to investigate, the Ohio LECs' justifications, and Staff's current position.

### a) Termination for Cause

Staff's Petition to Suspend and Investigate cited termination provisions as one of the tariff provisions which appeared to be unreasonable. Specifically, Staff noted that CBT's tariff language appeared to be vague regarding what constitutes a violation by the interconnector. Staff also pointed out that the company had not specified what action or non-action by an interconnector would trigger termination of the interconnection arrangement. Finally, Staff maintained that CBT did not provide the interconnector the opportunity or timeframe in which to respond to the alleged violation. Staff noted that Ameritech's proposed tariff contained similar termination provisions affording the company arbitrary and unilateral rights to terminate the interconnection arrangement for a perceived violation of Ameritech's tariff.

The FCC's Investigation Order directed the Tier 1 LECs to address, from the tariffs, the relevant notice provisions which justify discontinuation for any tariff violations, explain why the LEC should not be limited to disconnection of a material tariff term, and provide a definition of what constitutes a material tariff term.

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6. Those general categories the FCC found did not warrant further consideration are: length of contract terms; response times; assignability; and renewal terms and conditions.

CBT, in its direct case, clarified that the company will only terminate a collocation arrangement after material or repeated violations of the tariff and then only after other resolution methods have failed.<sup>7</sup> Material tariff violations, as explained by CBT, include repeated security breaches, repeated noncompliance with network compatibility standards, actions that unreasonably endanger the health and safety of others, noncompliance with CBT's insurance requirements, and failure to pay for services. Staff is satisfied with CBT's explanation on termination provisions as long as the company's tariff is clear that an interconnector's service will only be terminated after material or repeated tariff violations and only after other dispute resolution methods have failed.

In its direct case, Ameritech specified the notice time frames requested by the Commission and also itemized the conditions which warrant termination of the collocation arrangement.<sup>8</sup> The company posits that these conditions are the only material breaches of the tariff which warrant unilateral termination. According to Ameritech, unless these breaches result in termination, the company has absolutely no enforcement mechanism to protect its network. Ameritech also clarifies that it would only reclaim an interconnector's space if it was needed by the company or completely unused and requested by another interconnector. Staff still believes that space the company needs to reclaim for itself should be subject to a longer notification period. Staff also believes that the tariff should fully inform potential interconnectors of what actions could result in termination of the collocation arrangement and what the applicable notification time frames are. To the extent that unilateral, immediate termination is limited to the conditions listed in Ameritech's direct case, Staff is satisfied that Ameritech's guidelines are not unreasonable (with the exception of a longer notification period for space needed for Ameritech's provisioning of service for other customers).

Staff also notes that United did not fully address all aspects of the Commission's Investigation Order regarding termination provisions. For instance, United avers in its direct case

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7. CBT does not explain what is involved in the tariff dispute resolution process.

8. Those conditions, listed in Section 16.7.11 of Ameritech's tariff, include: abandonment of the premises; failure to make payments; bankruptcy, receivership or seizure of assets at the premises; failure to use the premises within 12 months; and continued disruption or threat of harm to Ameritech employees, network, or network services.

that the company reserves the right to terminate an interconnection arrangement for any tariff violations. However, the company does not address the issue of what constitutes material tariff violations or why United should not be limited to discontinuing a collocater's service only for material tariff violations. Staff acknowledges that both CBT and Ameritech have noted terms which could be considered material breaches and would posit that United should list similar terms and conditions within its tariff.

**b) Insurance Requirements**

Pursuant to comments submitted by Staff and other entities on the issue of insurance required of interconnectors, the Commission requested comments on levels of insurance and types of coverage required by the Tier 1 LECs. The Investigation Order also questioned the need for automobile insurance and required the Tier 1 LECs to compare the types of coverage required of interconnectors and the levels and types of coverage they hold on themselves. LECs that do not permit self-insurance and that require underwriters with particular rating levels were told to justify these positions. Finally, LECs requiring proof that an interconnector's insurance is effective at a certain time were asked to explain this policy.

Staff's review of the responses submitted by United, Ameritech, and CBT reveals that these companies failed to fully respond to all items posed by the Commission. For example, Ameritech did not address the automobile insurance issue while United did not compare its own insurance levels with those that the company requires of interconnectors. Moreover, CBT uses and requires its current contractors to use insurance underwriters with Best A ratings whereas CBT's tariff requires interconnectors to obtain insurance from underwriters with a Best AA rating.<sup>9</sup> Staff acknowledges that a need exists for the LECs to require some level of insurance and liability coverage; however, that level of insurance should be reasonably related to the levels of insurance required of other parties having access to LEC central offices and in no event should levels of insurance required of interconnectors be more than the level of insurance the LEC itself holds.

Additionally, Staff would point out that the Commission, in its Report and Order,<sup>10</sup> stated that "appropriate insurance levels and other similar matters are best resolved through informal discussions among interested parties, with those resolutions reflected in LEC tariffs." The Commission later stated, regarding

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9. CBT Direct Case, page 11.

10. Report and Order, page 38, footnote 189.

the same issue, that any arrangements imposed by the LECs must meet legitimate concerns and that the FCC would reject tariff language containing unreasonably restrictive or expensive terms. Staff would, therefore, encourage the Commission to review these insurance standards with this rationale in mind when determining whether the proposed standards are reasonable or not.

**c) Financial Arrangements**

The Commission's Investigation Order required Ameritech to justify developing its leaseback arrangement for virtual collocation on the manufacturer's suggested retail price rather than basing it on the price the interconnector actually paid for the equipment. Ameritech was also asked to defend requiring interconnectors to be prepared to provide service at full capacity instead of at the level the interconnector needs. Finally, the FCC questioned the reasonableness of Ameritech's tariff provision requiring that spare parts be stockpiled in every office.

On the latter two issues, Ameritech clarified that it does not require full capacity to provide service nor does it require an interconnector to keep spare parts available in every central office. Ameritech further explains, however, that keeping a minimum supply of spare parts on hand would significantly reduce maintenance time should an interconnector's equipment need repair. Ameritech's justification for utilizing the manufacturer's retail price is that all interconnectors using the same equipment would pay the same charge and using the manufacturer's retail price would absolve the company from releasing potentially proprietary interconnector information.

Staff accepts Ameritech's clarifications on the capacity and spare parts issues. However, Staff continues to believe that Ameritech's use of the manufacturer's retail price is inconsistent with the FCC's intent to permit interconnectors to negotiate individually the financial arrangements and ownership for the terminating equipment dedicated to its use.<sup>11</sup> Moreover, Ameritech proposes to add overhead loading factors onto the manufacturer's retail price of the equipment then lease this same equipment back to the interconnector. Staff again avers that it is inappropriate for Ameritech to add general overhead loadings to this leaseback rate because the resulting cost of the equipment could be much greater than interconnector price plus administrative charges. Ameritech should be instructed that it can not preclude interconnectors from negotiating other reasonable financial arrangements with the company.

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11. Report and Order, page 23, footnote 100.

### III. RATE STRUCTURE/COST DEVELOPMENT

In our Petition to Suspend and Investigate, Staff was generally concerned that the level of aggregation in the rate structure denies interconnectors many of the economies that the LEC provides itself in the provision of its services. Further, the LECs appeared to be recovering some costs through several rate elements, thus leading to double-recovery. The results are significantly higher costs for interconnectors than LECs have for establishing the same circuit. Staff did not believe that the result was indicative of the interconnectors' actual cost of service.

While Staff has been able to obtain and review limited source documents which justify some of the proposed rates, there are rates which remain, in our opinion, unjustified.

#### a) Floor Space/Central Office Build-Out

Staff originally submitted that the Ameritech tariff regarding floor space included costs which are also being received in the central office build-out rates. For instance, Ameritech appears to be including the costs of environmental conditioning of the central office in the central office build-out rate. This expense also appears to be included in the 1991 R.S. Means Construction Cost Data Book<sup>12</sup> which was used in the cost development of central office floor space. In Staff's opinion, this combination allows Ameritech to double-recover at least some of its central office investment.

#### b) Self-Provisioning

Another concern Staff expressed in its Petition to Suspend and Investigate was the manner in which certain LECs, including Ameritech and United,<sup>13</sup> prohibited interconnectors from self-provisioning certain functions. The companies' rationale for adopting this position was that there are added security concerns involved in permitting interconnectors to self-provision aspects of its collocation arrangement. Staff posited that self-provision would act as a market-based check on the rates proposed by the LECs for these services.

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12. The R.S. Means Construction Cost Data Book can be utilized to compare the costs associated with reconstructing telephone company central offices and commercial office buildings.

13. After reviewing the Ohio LECs' direct cases, Staff has a similar self-provision concern involving GTE.



Nothing within the direct cases submitted by the Ohio LECs persuades Staff to change its position on this matter. In fact, as we noted in our previous comments, CBT's tariff permits an interconnector or its approved contractor to pull the cable from the manhole, through the cable vault and riser, to the interconnector's partitioned space. CBT's allowance for interconnector self-provisioning seems to contradict directly the argument that there is an overriding security issue involved with self-provisioning.

**c) Individual Rate Elements**

**Recurring Charges for Nonrecurring Costs**

Staff noted in its Petition to Suspend and Investigate that Ameritech appeared to be recovering certain fixed costs on a recurring basis. Staff understands that many fixed costs are recovered using recurring charges. However, Ameritech has chosen to recover certain fixed costs using recurring charges but is recovering others via non-recurring charges. Staff does not believe Ameritech has adequately developed a rationale for the varying recovery methods.

**d) Miscellaneous Concerns**

In the time frame allotted to review and comment on the LEC direct cases, the Staff also identified a number of other areas which warrant further investigation and justification. Ameritech, for instance, did not list each rate element that is partitioned and demonstrate that the sum of the unit costs and rates of the partitioned parts equals the unit cost and rate of the unpartitioned rate as required by the Investigation Order.<sup>14</sup> Staff has an underlying concern that some interconnectors may be forced to pay for services or facilities which they will not be receiving. For instance, central office build-out rates are required to be paid by initial interconnectors who actually do cause the construction expense as well as subsequent interconnectors who may do nothing more than move into a space with little or no construction expense to Ameritech. Also, costs for such items as security locks, etc. are included in Ameritech's rates even if those are central offices where interconnector personnel must be escorted. Ameritech should also be required to justify, more fully, its position on the reasonableness of calculating closure factors.<sup>15</sup> It would appear, without further explanation, that the

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14. Investigation Order, page 9, paragraph 18.

15. Ameritech Direct Case, pages 11-12, paragraph 22(c)(2).

inclusion of closure factors operates to make expanded interconnection revenue neutral to the company. No other Ohio LEC sought to include closure factors when determining overhead. Staff believes that the Commission's intent in developing expanded interconnection was to lower rates to end users through fostering competition; however, Ameritech appears to be developing the service so that its current revenue base remains intact.

Regarding GTE's direct case, Staff failed to find support for the cross-connect functions and entrance facility functions required by the Commission in the company's tariff review plan. Another tariff provision Staff finds egregious is GTE's Building Modification Charge.<sup>16</sup> As explained by GTE, the Building Modification Charge recovers common construction costs and applies in full to the first interconnector in each central office. GTE has also agreed to provide a pro rata refund of the aforementioned charge if a second or third interconnector orders service in the same central office within the first 12 months of the first interconnector. After the first year, subsequent interconnectors would only be assessed charges based on the labor activity required to establish the interconnection arrangement. GTE's justification for this 12 month limitation is that extending the one year interval increases the administrative requirements needed to accurately apply the credit.

Staff does not agree with GTE's justification for imposing a 12 month refund, therefore, this provision should be removed. Staff believes that it would be administratively more difficult to keep track of a variety of timeframes rather than just pro rating the refund over a certain number of interconnectors.

The Commission also requested LECs to comment on provisions in their tariffs regarding catastrophic loss. Staff recognizes that a reasonable period of time should be given LECs to determine whether a wire center will be rebuilt due to catastrophic loss. However, given the importance of a wire center to the LECs' network, Staff believes that such decisions should be made in a relatively short timeframe such as the 30 day period advanced by United.<sup>17</sup> Thus, Staff finds CBT's 90 day notice to interconnectors and GTE's lack of a specified notice period unreasonable.<sup>18</sup>

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16. GTE direct case, pages 28-29.

17. United direct case, page 20, paragraph I.

18. CBT direct case, page 9, paragraph I; GTE direct case, page 45, paragraph I.

**IV. CONCLUSION**

For the foregoing reasons, Staff requests that the FCC require further justification or modification of the issues addressed herein.

Respectfully Submitted,

The Staff of the Public Utilities  
Commission of Ohio

A handwritten signature in dark ink, appearing to read "Ann E. Henkener", written over a horizontal line.

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Date: September 17, 1993